

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE

Assigned on Briefs January 23, 2008

JUSTIN MILLS v. CHERRY LINDAMOOD, Warden

Appeal from the Circuit Court for Wayne County
No. 14186 Robert Holloway, Judge

No. M2007-01622-CCA-R3-HC - Filed February 19, 2008

The Petitioner, Justin Mills, appeals the Wayne County Circuit Court's summary dismissal of his petition for habeas corpus relief. The Petitioner was indicted for first degree felony murder and aggravated assault, and he ultimately pled guilty to second degree murder. The Petitioner argues that the felony murder charge was fatally defective and, thus, deprived the trial court of jurisdiction to enter judgment against him. Specifically, he argues that the indictment (1) did not charge that he committed the killing "unlawfully," and (2) did not set forth the elements of the underlying felony (aggravated burglary) or reference the underlying felony statutes. The habeas corpus court dismissed the petition, finding that the Petitioner had failed to state a cognizable claim for habeas corpus relief. We agree and affirm the order summarily dismissing the petition.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed

DAVID H. WELLES, J., delivered the opinion of the court, in which THOMAS T. WOODALL and ROBERT W. WEDEMEYER, JJ., joined.

Justin Mills, Clifton, Tennessee, Pro Se.

Robert E. Cooper, Jr., Attorney General and Reporter; and Rachel E. Willis, Assistant Attorney General, for the Appellee, State of Tennessee.

OPINION

Factual Background

On November 20, 2001, a Davidson County grand jury returned a two-count indictment against the Petitioner charging him with the first degree felony murder of Tandy Fletcher and the aggravated assault of another victim. The felony murder count at issue in this appeal reads in part as follows:

[The Petitioner] on the 7th day of April, 2001, in Davidson County Tennessee and before the finding of this indictment, did kill Tandy Fletcher, during the perpetration of or attempt to perpetrate aggravated burglary, in violation of Tennessee Code Annotated § 39-13-202

The judgment form provided by the Petitioner indicates that he pled guilty on July 19, 2004, to second degree murder. See Tenn. Code Ann. § 39-13-210 (defining second degree murder). He was sentenced to twenty-five years at 100% in the Department of Correction.

In March 2007, the Petitioner filed a petition for habeas corpus relief, arguing that the indictment was void and defective. While the petition is bumbling and redundant, we discern two basic allegations by the Petitioner challenging the felony murder count issued against him: (1) the indictment did not charge that the killing was committed “unlawfully;” and (2) the indictment did not provide the elements of the underlying felony (aggravated burglary) or cite to those statutes.

The State filed a motion for summary dismissal, seeking dismissal of the petition on the basis that the Petitioner had not stated a cognizable claim for relief. In its memorandum in support of the motion, the State contended that the indictment sufficiently alleged the elements of felony murder and, thus, the judgment for second degree murder was properly entered against the Petitioner. The habeas corpus court granted the State’s motion and entered an order of dismissal on May 17, 2007, stating therein that “[t]he indictment in this case is not deficient” It is from this determination that the Petitioner now appeals.

ANALYSIS

The determination of whether to grant habeas corpus relief is a question of law and our review is de novo. See Summers v. State, 212 S.W.3d 251, 262 (Tenn. 2007). The Tennessee Constitution guarantees a convicted criminal defendant the right to seek habeas corpus relief. See Tenn. Const. art. I, § 15. However, the grounds upon which habeas corpus relief will be granted are very narrow. Taylor v. State, 995 S.W.2d 78, 83 (Tenn. 1999). A petition for habeas corpus relief may only be granted when the judgment is shown to be void, rather than merely voidable. Id. A judgment is void only when it appears upon the face of the judgment or the record of the proceedings upon which the judgment is rendered that the convicting court was without jurisdiction or authority to sentence a defendant or that a defendant’s sentence has expired. Archer v. State, 851 S.W.2d 157, 164 (Tenn. 1993). On the other hand, a voidable judgment or sentence is one which is facially valid and which requires evidence beyond the face of the judgment or the record of the proceedings to establish its invalidity. Taylor, 995 S.W.2d at 83. A petitioner bears the burden of establishing a void judgment or illegal confinement by a preponderance of the evidence. Hogan v. Mills, 168 S.W.3d 753, 755 (Tenn. 2005). Moreover, it is permissible for a court to summarily dismiss a habeas corpus petition, without the appointment of counsel and without an evidentiary hearing, if there is nothing on the face of the record or judgment to indicate that the convictions or sentences addressed therein are void. Passarella v. State, 891 S.W.2d 619, 627 (Tenn. Crim. App. 1994).

Although in most instances a challenge to the sufficiency of an indictment is not a proper claim to raise in a habeas corpus proceeding, see Haggard v. State, 475 S.W.2d 186, 187-88 (Tenn. Crim. App. 1971), “the validity of an indictment and the efficacy of the resulting conviction may be addressed in a petition for habeas corpus when the indictment is so defective as to deprive the court of jurisdiction[,]” Dykes v. Compton, 978 S.W.2d 528, 529 (Tenn. 1998). An indictment meets constitutional requirements if it provides sufficient information: (1) to enable the accused to know the accusation to which an answer is required; (2) to furnish the court an adequate basis for the entry of a proper judgment; and (3) to protect the accused from double jeopardy. State v. Hill, 954 S.W.2d 725, 727 (Tenn. 1997). In addition, an indictment must state the facts of the offense in ordinary and concise language “in such a manner as to enable a person of common understanding to know what is intended.” Tenn. Code Ann. § 40-13-202.

The Petitioner’s challenge to the felony murder charge is two-fold. As his first challenge, he argues that the indictment should have included language that he committed the killing “unlawfully” and, because the indictment did not allege an “unlawful” killing, his conviction for second degree murder is void. Second, the Petitioner contends that the trial court was without jurisdiction to enter judgment in this case because the indictment charging felony murder did not allege all of the elements of the underlying felony (aggravated burglary) or provide a reference to the relevant underlying felony statutes.

To obtain a conviction for first degree felony murder in this case, the State would have been required to prove, beyond a reasonable doubt, the “killing of another committed in the perpetration of or attempt to perpetrate any . . . burglary” Tenn. Code Ann. § 39-13-202(a)(2). This Court has observed “that a felony murder indictment must allege that the killing was committed during the perpetration of a felony, but specific allegations of the elements and facts of the underlying felony are unnecessary.” State v. Alfonso E. Anderson, No. W2000-00737-CCA-R3-CO, 2002 WL 1558491, at *2 (Tenn. Crim. App., Jackson, Jan. 9, 2002) (citing State v. Jimmy Wayne Baker, No. M1999-00454-CCA-R3-CD, 2001 WL 252082, at *10-11 (Tenn. Crim. App., Nashville, Mar. 14, 2001); Alan D. Lawhorne v. State, No. 273, 1990 WL 70908, at *2 (Tenn. Crim. App., Knoxville, May 31, 1990)). The State was not required to charge the elements of aggravated burglary or cite to those statutes in the indictment. See Robert Howell v. Tony Parker, Warden, No. W2005-00521-CCA-R3-HC, 2005 WL 1541825, at *2 (Tenn. Crim. App., Jackson, June 27, 2005). Nor is the State’s failure to include the word “unlawfully” fatal to the indictment. See Jerry D. Carney v. David Mills, Warden, No. W2004-01563-CAA-R3-HC, 2004 WL 2756052, at *4 (Tenn. Crim. App., Jackson, Dec. 2, 2004).

The indictment at issue tracked the language of the felony murder statute, made specific reference to the statute, stated the underlying felony, provided the date of the offense, and identified the name of the victim. That was enough to satisfy the constitutional and statutory requirements of Hill. See State v. Sledge, 15 S.W.3d 93, 95 (Tenn. 2000). The trial court had subject matter jurisdiction to accept the Petitioner’s guilty plea to the lesser included offense of second degree murder. Thus, no jurisdictional defect exists to void the Petitioner’s conviction.

CONCLUSION

The Petitioner has failed to demonstrate that his sentence has expired or that his conviction is void. Accordingly, the judgment of the habeas corpus court summarily dismissing the petition for a writ of habeas corpus is affirmed.

DAVID H. WELLES, JUDGE